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IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 484 OF 2007

Vivek D. Shinde Petitioner

Vs.

The Election Commission & Ors. Respondents

Mr. S. M. Gorwadkar, Advocate for the petitioner

Mr. S. B.Shetye, Advocate for respondent No.1.

Mr. R. G. Ketkar with Mr. R. M. Pethe Advocates for respondent No.2 & 3.

CORAM: F.I. REBELLO,
AND
R. V. MORE, JJ.

DATE : JANUARY 19, 2007.

P.C.:

. Not on board. Mentioned, taken on board.

2. Petitioner herein has filed election papers in time and they have been accepted. Petition was thereafter given Annexture-II by recognised political party. In terms of the notification issued by the Election Commissioner, the last date of filing Annexture-II was 15th January 2007 by 3 p.m. It is the case of the respondent that petitioner filed the same at 3.30 p.m. Accordingly, Returning Officer did not accept the

same. The effect would be that the petitioner

would now be contesting as an independent candidate rather than as a candidate sponsored by a recognised national party.

3. On behalf of Petitioners, the learned counsel points out that election papers could not be filed in time for the reasons set out. It is submitted that the respondent No.1 is Election Commission. Respondent no.2 in this matter is exercising quasi judicial power and in these circumstances he ought to have exercised the discretion and accepted Annexture-II.

. Respondent no.2 was acting as a delegate on behalf of respondent no.1. Rules and notifications were issued by respondent No.2 as a delegate. Therefore, respondent no.1 is acting contrary to the rules and notifications issued. The notification is clear that Annexture_II has to be submitted by 3.00 p.m. of the 15th January 2007. Even if it is assumed that the act of receiving Annexture-II is quasi judicial function and in the absence of any discretion conferred, it would not have been open to respondent no.2 to

have extended time, as he was acting as delegate on behalf of respondent no.1. If we were to extend theory of hardship in this matter, it is not as if the petitioner would be barred from contesting the elections. The nomination is valid and petitioner will be allotted symbol other than the symbol, reserved for a recognised political party. In these circumstances, it will not be possible to consider the test of hardship, specially in election matters where other candidates are also in the field and who are not parties before us. It was always open to the other candidates who have pointed out as to why time should be extended and the effect of extending time. Considering the above, we are not inclined to interfere in the exercise of our extra ordinary jurisdiction. In the light of that, petition is rejected.

[R. V. MORE, J.] **[F. I. REBELLO, J.]**